IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10713 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ARUNBHAI PRAKASHBHAI KHARVA

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 10713 of 2002

MR RB SHARMA for HL PATEL ADVOCATES for Petitioner No. 1

MR MK PATEL, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 05/03/2003

ORAL JUDGEMENT

#. By filing this petition, the petitioner-detenu has challenged his detention order dated 31.7.2002. By the

impugned order, the petitioner-detenu is detained in exercise of the powers under section 3(2) of the Gujarat Prevention of Antisocial Activities Act,1985 (hereinafter referred to as "the PASA" for short), as, the detaining authority found that the detenu is a "dangerous person" and is required to be detained under the preventive detention, so that, he may not continue with such type of illegal activities.

#. Along with the detention order, the detenu was also served with the grounds of detention of the same date. In the said grounds, there is a reference of four criminal cases, which are pending against the petitioner. In the grounds of detention, there is a reference of statements of some witnesses. It is alleged against the petitioner that, he is a headstrong person. The particulars of the activities of the petitioner are given in the detention order. The authority, after having been satisfied about the alleged activities of the petitioner, has detained him by way of preventive detention.

#. At the time of hearing of this petition, it is argued by the learned advocate for the petitioner that, even though, the petitioner made representation on 24.9.2002, the authority has not decided the same expeditiously, and, ultimately, he has been intimated the order of the Home Department dated 4.10.2002 wherein it has been mentioned that the representation of the petitioner dated 26.9.2002 is rejected by the authority on 4.10.2002. The said communication is placed on record by the learned advocate for the petitioner. Though in the said communication, the date of representation is mentioned as 26.9.2002, but according to the petitioner, the actual date is 24.9.2002 and averments in this behalf are made in para 16 of the petition. However, if it is presumed that the representation of the petitioner is dated 24.9.2002, the department has not explained the delay in deciding the representation upto 4.10.2002. In fact, there is no affidavit-in-reply at all to point out as to on which date, such representation is received by the department. In such matters, at least, the affidavit-in-reply was required to be filed to explain the delay in deciding the representation. Since there is no reply at all, the averments made in the petition are required to be accepted and the petition is required to be allowed on the ground of delay in deciding the representation.

#. In view of what is stated above, the petition is allowed. The order of detention dated 31.7.2002 is quashed and set aside. The detenu Arunbhai Prakashbhai

Kharva is ordered to be set at liberty forthwith if he is not required in connection with any other case. Rule is made absolute accordingly.

(P.B.Majmudar,J)
(pathan)